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APPLICATION NO	. 1	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/645,135 08/20/2003		08/20/2003	Garry Tsaur		7150	
29745	7590	09/07/2006		EXAM	EXAMINER	
JOE NIEI		A.D. #204	LHYMN, EUGENE			
18760 E. AMAR ROAD #204 WALNUT, CA 91789			ART UNIT	PAPER NUMBER		
				3727		
				DATE MAILED: 09/07/2006	DATE MAILED: 09/07/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

		R					
	Application No.	Applicant(s)					
	10/645,135	TSAUR, GARRY					
Office Action Summary	Examiner	Art Unit					
	Eugene Lhymn	3727					
The MAILING DATE of this communication app	ears on the cover sheet with the o	correspondence address					
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY	Y IS SET TO EXPIRE 3 MONTH	(S) OR THIRTY (30) DAYS,					
<ul> <li>WHICHEVER IS LONGER, FROM THE MAILING DA</li> <li>Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.</li> <li>If NO period for reply is specified above, the maximum statutory period v</li> <li>Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tircuit apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	N. nely filed the mailing date of this communication. ED (35 U.S.C. § 133).					
Status							
1) Responsive to communication(s) filed on 15 A	ugust 2006.						
,-	action is non-final.						
closed in accordance with the practice under E	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims							
4) Claim(s) 1-7 is/are pending in the application.							
5) Claim(s) is/are allowed.	4a) Of the above claim(s) <u>1-3,6 and 7</u> is/are withdrawn from consideration.						
6) Claim(s) 4-5 is/are rejected.							
7) Claim(s) is/are objected to.							
8) Claim(s) are subject to restriction and/o	r election requirement.						
Application Papers							
9) The specification is objected to by the Examine	ег.						
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11) The oath or declaration is objected to by the Ex	caminer. Note the attached Office	e Action or form PTO-152.					
Priority under 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).							
a) All b) Some * c) None of:							
1. Certified copies of the priority documents have been received.							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.							
See the attached detailed Office action for a list	of the certified copies not reserv	ou.					
Attachment(s)							
1) Notice of References Cited (PTO-892)	4) Interview Summar Paper No(s)/Mail [						
<ul> <li>2) Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)</li> </ul>	5) Notice of Informal	Patent Application (PTO-152)					
Paper No(s)/Mail Date	6) Other:						

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### **DETAILED ACTION**

#### Election/Restrictions

1. Claims 1-3, 6-7 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected embodiments, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/15/06.

## Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- Claims 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosler
   (US 4046279). With respect to claim 4, Rosler discloses the following:
  - Connector means 18 with a reduced section (conical portion of 18) wherein said connector means is inserted into an elongated container with the reduced section positioned at the opening means of the container (19)

With respect to claim 5, Rosler discloses the connector means having an elongated protrusion at one end, said elongated protrusion directed away from the opening means (the portion of 18 opposite the conical end), wherein 1 is the section that will be broken off, and the connector means will retain 1 via detents 4, wherein the

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connector means can be pulled out of the container. With respect to the connector means be used as a toothpick, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

4. Claims 4-5 are rejected under 35 U.S.C. 102b as being anticipated by Wagner (US 4326548). With respect to claim 4, Wagner discloses a short section of material with a reduced section 26 positioned at the opening means of the container, wherein connector means retains the section of the container 14, that will be broken off.

With respect to claim 5, Wagner discloses an elongated protrusion 20 directed away from the portion of the container that will be broken off, that can be used as a toothpick.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <a href="http://pair-direct.uspto.gov">http://pair-direct.uspto.gov</a>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NATHAN J. NEWHOUSE Primary Examiner SUPERVISORY PATENT EXAMINER